



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

File: LIN-99-176-50705

Office: Nebraska Service Center

Date: AUG 15 2000

IN RE: Petitioner:
Beneficiary:

Petition: Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(4)

preventing or
prevent clearly unwarranted
invasion of personal privacy

IN BEHALF OF PETITIONER:

Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Nebraska Service Center. The matter is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a church. It seeks classification of the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(4), to serve as a minister. The director denied the petition determining that the petitioner had failed to establish the beneficiary's two years of continuous service as a minister.

On appeal, counsel argues that the beneficiary is eligible for the benefit sought.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. 1101(a)(27)(C), which pertains to an immigrant who:

(i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;

(ii) seeks to enter the United States--

(I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,

(II) before October 1, 2000, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or

(III) before October 1, 2000, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and

(iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

At issue in the director's decision is whether the petitioner has established that the beneficiary had two years of continuous work experience as a minister.

8 C.F.R. 204.5(m)(1) states, in pertinent part, that:

All three types of religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two year period immediately preceding the filing of the petition.

The petition was filed on May 25, 1999. Therefore, the petitioner must establish that the beneficiary had been continuously working in the prospective occupation for at least the two years from May 25, 1997 to May 25, 1999.

In its letter dated May 21, 1999, the petitioner stated that the beneficiary "has been pursuing his religious vocation for many more than the two required years immediately preceding this petition . . . [He] was first associated with our church as a volunteer . . . We have agreed to pay [him] \$25,000.00 per year."

On September 7, 1999, the director requested that the petitioner submit additional information. In response, the petitioner submitted a letter from the senior pastor of the [REDACTED] who asserted that the beneficiary worked approximately 31 hours per week [during 1997] . . . He received . . . approximately \$600.00 per month." The petitioner submitted a "certificate of ordination" issued by it to the beneficiary on April 7, 1999 recognizing the beneficiary to be a "teaching elder." Counsel argued that the beneficiary had been carrying on his vocation throughout the two-year period.

On appeal, counsel again argues that the beneficiary has been pursuing a vocation throughout the qualifying period and, therefore, has met the requirements at 8 C.F.R. 204.5(m)(1). Counsel's argument is unpersuasive. 8 C.F.R. 204.5(m)(2) defines a religious vocation, in part, as a calling to religious life evidenced by the taking of vows. The petitioner has claimed that the beneficiary will receive remuneration for his duties at the church and has submitted a claim that the beneficiary received remuneration in the past. As such, it is apparent that the beneficiary is not, and has not been, pursuing a vocation. Moreover, there is no evidence that the beneficiary has ever been ordained as a minister. The "certificate of ordination" recognizes the beneficiary as a teaching elder, not as a minister. Also, the simple issuance of a document entitled "certificate of ordination," which is not based on specific theological training or education, does not prove that an alien is qualified to perform the duties of

a minister or pastor. See Matter of Rhee, 16 I&N Dec. 607, 610 (BIA 1978).

Counsel refers to an unpublished administrative decision of this Service regarding the appeal of a special immigrant religious worker case to support his argument. While it has not been shown that the facts of the cases are similar, it must be noted that the unpublished administrative decision relied on by counsel does not have binding precedential value. See 8 C.F.R. 103.3(c).

Neither the statute nor the regulations stipulate an explicit requirement that the work experience must have been full-time paid employment in order to be considered qualifying. This is in recognition of the special circumstances of some religious workers, specifically those engaged in a religious vocation, in that they may not be salaried in the conventional sense and may not follow a conventional work schedule. 8 C.F.R. 204.5(m)(2) defines a religious vocation, in part, as a calling to religious life evidenced by the taking of vows. The regulations therefore recognize a distinction between someone practicing a life-long religious calling and a lay employee. The regulation defines religious occupations, in contrast, in general terms as an activity related to a traditional religious function. *Id.* In order to qualify for special immigrant classification in a religious occupation, the job offer for a lay employee of a religious organization must show that he or she will be employed in the conventional sense of full-time salaried employment. See 8 C.F.R. 204.5(m)(4). Therefore, the prior work experience must have been full-time salaried employment in order to qualify as well. The absence of specific statutory language requiring that the two years of work experience be conventional full-time paid employment does not imply, in the case of religious occupations, that any form of intermittent, part-time, or volunteer activity constitutes continuous work experience in such an occupation.

The petitioner has not established that the beneficiary was continuously engaged in a religious occupation from May 25, 1997 to May 25, 1999. The objection of the director has not been overcome on appeal. Accordingly, the petition may not be approved.

Beyond the decision of the director, the petitioner has failed to establish that the prospective occupation is a religious occupation as defined at 8 C.F.R. 204.5(m)(2) or that the beneficiary is qualified to work in a religious occupation as required at 8 C.F.R. 204.5(m)(3). Also, the petitioner has failed to establish its ability to pay the proffered wage as required at 8 C.F.R. 204.5(g)(2). As the appeal will be dismissed on the ground discussed, these issues need not be examined further.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.